DOCKET FILE COPY ORIGINAL RECEIVED
APR 1 1 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems | ) | WT Docket No. 96-18 |
| | ) | |
| Implementation of Section 309(j) of the Communications Act -- Competitive Bidding | ) | PP Docket No. 93-253 |

To: The Commission

## PETITION FOR RECONSIDERATION

Preferred Networks, Inc. ("PNI"), pursuant to Section 1.429(a) of the rules and regulations of the Federal Communications Commission ("FCC" or "Commission") and by counsel, respectfully requests that the Commission reconsider that portion of its Second Report and Order and Further Notice of Proposed Rulemaking in the above-styled proceeding in which the Commission modified its interim licensing rules governing application for the shared private carrier paging ("PCP") channels. PNI is concerned that the Commission's action will provide opportunities for new applications to be filed by the so-called "application mills" and by other persons for "greenmail" purposes. Until the Commission is able to adopt additional rules for the shared PCP channels based on it Further Notice in this proceeding, PNI asks that the Commission (1) continue to restrict the entities which may file applications for new facilities that are not expansions of existing systems and (2) amend the interim licensing rules to provide for a 75-mile "moving" requirement which an incumbent licensee must meet to file applications which expand its existing system.

## INTRODUCTION

PNI, a Delaware corporation, is a paging company with its headquarters in Norcross, GA. PNI, unlike other paging companies, is a carrier's carrier of exclusively wholesale one-way paging network services. The Company's customers purchase and resell the Company's network services to their subscribers. PNI has or serves more 240 customers (including four of the five major paging service providers in the U.S.), which collectively resold paging services on the Company's networks to over 153,000 subscribers. PNI's network operates primarily on the shared PCP frequency, 157.74 MHz, for which it has licensed, or has applications pending, in 48 of the 50 larger U.S. metropolitan markets and adjacent areas. PNI also is licensed and operates on Common Carrier Paging ("CCP") frequencies, 931.2625 MHz, 931.3125 MHz, 158.10 MHz, and 152.84 MHz, and PCP frequencies, 462.85 MHz and 462.80 MHz.

PNI has participated actively in this proceeding because of the impact that the Commission's action will have on its existing business and its future business plans. PNI was pleased that the Commission's adopted interim licensing rules which permitted, to a limited extent, PNI to proceed with their network buildouts. The 40-mile limitation on system expansion restricted PNI's ability to expand portions of its intended network, it represented a reasonable balance between meeting the needs of qualified service providers and inhibiting purely speculative filings.

The more liberal provisions adopted in the instant Order alter that careful balance. On one hand, PNI is eager to avail itself of the relief extended in connection with these modified licensing rules governing the shared PCP channels. On the other hand, PNI is concerned that the opportunities provided may encourage abuse of the rules by the so-called application mills and by entities which file applications for anti-competitive purposes. PNI therefore suggests that the Commission consider continuing to limit the acceptance of applications for the shared PCP channels to incumbent licensees until the Commission has adopted rules which may discourage "speculative" or anti-competitive applications.

DISCUSSION

**A. The Commission should maintain its interim licensing rules governing shared PCP channels to permit acceptance of applications by incumbent licensees only.**

Pursuant to the original interim licensing rules, the Commission would accept applications for shared PCP channels from incumbent licensees only. In the Second Report and Order, it amended those rules to permit new entities to file applications for private, internal-use systems. The Commission stated that it did not believe that grant of applications for private systems would encourage speculative applications, because these systems cannot be operated on a commercial basis.[1] PNI respectfully disagrees with the Commission's conclusion.

Contrary to the Commission's determination, certain private, internal paging systems may have commercial indicia, even though the commercial operator does not hold the license to operate the system.[2] The commercial entity will provide all necessary equipment to operate the system, manage and maintain the facility, and

---

[1] Second Report and Order, ¶ 43.

[2] See 47 C.F.R. § § 90.179, 90.185.

charge the licensee a fixed fee for the services. Although the Commission indicates it will not entertain applications to convert such private, internal use systems to commercial use, under the interim licensing rules, it does not state that such policy will continue upon adoption of permanent rules. Consequently, there is a likelihood that unsuspecting persons could be persuaded to file applications for such "commercial" systems contrary to the Commission's intended result.

PNI recognizes that there may be certain entities which are eligible to apply for the shared PCP channels that provide critical services to the general public, such as hospitals. Some such entities may seek channels in the Business Radio Service because paging frequencies designated for their use in more specialized radio services, such as the Special Emergency Service, are extremely congested. PNI would not be adverse to the Commission continuing to accept Business Radio Service applications from new applicants that provide "quasi public safety" or medical services and that can demonstrate that frequencies in other services in which they are eligible are not acceptable for the applicant's intended use.

Other alternatives which the Commission could adopt on an interim basis, and should consider adopting on a permanent basis are:

1. Require an applicant to provide a channel loading analysis for any requested frequency to ensure that capacity exists on the frequency. For example, if a paging frequency is being shared already by two paging companies with 50,000 pagers in a geographical area, a small business with a legitimate need for 20 pagers may be unable to use the frequency. Alternatively, if such an entity intended to disrupt the provision of service to the other 50,000 subscribers, or did so inadvertently by failing to comply with monitoring and other frequency sharing requirements, it could do so under the modified interim licensing rules.

2. Restrict the emissions on the shared PCP channels to digital pages only, i.e., new applicants may not apply for facilities which use voice paging.

3. Adopt and enforce channel sharing arrangements which would require new applicants to accept reasonable sharing arrangements with incumbents, such as physical connections and airtime use arrangements based on the number of transmitters and number of customers served.

Liberalization of the interim licensing policy prior to adoption of rules which are designed to limit speculation may lead to abuses of the Commission's licensing policies. PNI, therefore, asks that the Commission reconsider accepting applications from new applicants for private, internal-use systems while the interim rules are in effect.

**B. The Commission should amend its interim licensing rules governing shared PCP channels to continue to require an incumbent licensee to demonstrate that the *requested facilities will expand an existing system.***

The 40-mile limitation of the original interim licensing rules was effective in limiting speculative opportunities, but also proved unnecessarily restrictive for operators, such as PNI, that are actively engaged in network expansion. PNI welcomes a liberalization of the Commission's rules which will permit it to continue its nationwide network build-out. However, the elimination of any criteria for filing expansion applications, however, may lead to the speculative applications which the Commission seeks to restrict. PNI, therefore, suggests that a compromise criteria be adopted to permit incumbent licensees greater flexibility to expand existing operations, yet discourage speculative applications.

As currently adopted, incumbent licensees may apply for additional facilities on already licensed frequencies anywhere in the United States, upon the effective date of the amended interim licensing rules.[3] There is no certification required that already licensed facilities are constructed and operational or that new facilities requested will be a part of an existing system. Thus, the amended rule permits "application mills" to continue to prey on persons who were sold, and still hold shared licenses. Consistent with past practices, the FCC can assume that the mills will encourage those same "incumbents" to file yet more applications on the basis that continued licensing will bring even greater financial rewards. The Commission, therefore, may wish to modify its interim licensing rules to require an applicant to demonstrate that its application is filed to expand a system and is not "speculative" in nature.

To that end, PNI suggests that the Commission require an incumbent licensee to certify that it has a constructed facility operating on the requested frequency within 75 miles of the proposed facility. Unlike the former 40-mile requirement, the date on which the constructed facility was licensed would not be a factor. Such modifications would permit incumbent licensees to continue to expand their systems as the needs of customers dictate, while deterring further unscrupulous activities by licensing mills. This criteria should not be burdensome to the legitimate paging operator. Further, this requirement should deter even "legitimate" incumbent licensees from making speculative or anti-competitive filings.

---

[3] PNI also understands that the Commission interprets its modified rule to permit an incumbent licensee to apply for any shared PCP channel, not just the frequency on which it holds a license. Such a policy could certainly lead to abuse of the Commission's licensing rules and should not be implemented.

## CONCLUSION

PNI asks the Commission to consider further modification of its interim licensing rules to foreclose possible abuses by speculators without further handicapping the highly competitive paging industry which has implemented expansive networks on the shared PCP channels. PNI looks forward to continuing to work with the Commission to craft rules and policies which will serve the public interest and permit the most spectrum efficient use of the shared PCP channels.

Respectfully submitted,

PREFERRED NETWORKS, INC.

By: ______________________

Elizabeth R. Sachs
Terry J. Romine

Its Attorneys

Lukas McGowan Nace & Gutierrez, Chartered
1111 Nineteenth Street, N.W., Suite 1200
Washington, D.C. 20036
(202) 857-3500

Date: April 11, 1997